

Appl. No. 10/620,117
Amdt. dated April 10, 2006

Reply to Office Action of January 27, 2006
Attorney Docket 12618

REMARKS

Claims 1-4, 7, 8 and 10-18 are pending in the application. Claims 1, 4 and 8 are amended and claims 5, 6 and 9 are cancelled. Claim 18 is added. Claims 6 and 9 are allowed. Claim 1 is amended to include subject matter neither shown nor described in the cited references. Claim 4 is amended to include the allowable subject matter of claim 6 to place claim 4 in condition for allowance. Claim 8 is amended to include the allowable subject matter of claim 9 to place claim 8 in condition for allowance. The specification is amended to correct typographical errors. No new matter is added. Favorable reconsideration and allowance of this application is respectfully requested in light of the amendments and the foregoing remarks.

Indication of Allowable Subject Matter

Applicants wish to thank the Examiner for indication that claims 6 and 9 are allowed.

Rejection of claims 1-5, 7 and 11-17 under 35 U.S.C. §102

Claims 1-5, 7 and 11-17 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Published Patent Application No. 2002/0083695 to Behnke et al. (hereinafter referred to as "Behnke"). Claims 5 and 6 are cancelled.

Claim 1 is amended to recite, in particular, that said vertical conduit also being mounted on the combine for sideways pivoting of at least a portion of the vertical conduit about a horizontal pivot axis to permit retracting said horizontal conduit into a storage position, wherein the horizontal pivot axis is parallel to the longitudinal axis of the combine. Support for this subject matter can be found, for example, on page 8, lines 25-26 of the specification. No new matter is added.

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According to the Office Action, Behnke is capable of permitting "retracting of said horizontal conduit into a storage position." However, nowhere does Behnke describe or suggest a vertical conduit being mounted on the combine for sideways pivoting of at least a portion of the vertical conduit about a horizontal pivot axis to permit retracting said horizontal conduit into a storage position, wherein the horizontal pivot axis is parallel to the longitudinal axis of the combine. Rather, Behnke discloses in paragraph [0027] that "the operator can adjust the height of the crop pick-up device 2, pivot the transfer device 3 about its vertical axis of rotation 10, control the direction of the transfer flap 9, and alter the height of the transfer device 3 about its horizontal axis of rotation 15."

The horizontal axis of rotation 15 of Behnke is clearly non-parallel with the longitudinal axis of the combine. In fact, the horizontal axis of rotation 15 is perpendicular to the longitudinal axis of the combine. Even if the transfer device 3 were rotated about its vertical axis of rotation 10 in order to align the horizontal axis of rotation 15 with the longitudinal axis of the combine, the transfer device 3 would be incapable of altering its height to a storage position because the transfer device 3 would be projecting sideways from the combine as shown in Figure 2 of Behnke. Applicants respectfully submit that Behnke does not describe nor suggest the subject matter of claim 1. Accordingly, allowance of claim 1 is respectfully requested. Claims 2, 3 and 11-14 depend from claim 1 and are allowable for the same reasons as claim 1.

Claim 4 is amended to include the allowable subject matter of claim 6 and intervening claim 5 to place claim 4 in condition for allowance. Claims 7 and 15-17 depend from claim 4 and are allowable for the same reasons as claim 4. Accordingly, allowance of claims 1-4, 7 and 11-17 is respectfully requested.

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Claim 18 is added to disclose additional subject matter neither described nor suggested in the cited references. No new matter is added. Support for claim 18 can be found, for example, on page 8, lines 21-29 of the specification. Applicants respectfully submit that newly added claim 18 defines patentable subject matter and allowance of claim 18 is respectfully requested.

Rejection of claims under 35 U.S.C. §103

Claim 8 was rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,361,435 to Yamamoto et al. in view of U.S. Patent No. 4,765,190 to Strubbe and U.S. Patent No. 4,907,402 to Pakosh. Claim 10 was rejected under 35 U.S.C. §103(a) as being unpatentable over Behnke in view of Pakosh.

Claim 8 is amended to include the allowable subject matter of claim 9 to place claim 8 in condition for allowance. Accordingly, allowance of claim 8 is respectfully requested.

Claim 10 is dependent on claim 1. As discussed above, Behnke does not describe nor suggest a vertical conduit also being mounted on the combine for sideways pivoting of at least a portion of the vertical conduit about a horizontal pivot axis to permit retracting said horizontal conduit into a storage position, wherein the horizontal pivot axis is parallel to the longitudinal axis of the combine, as required by claim 1. Pakosh is cited for allegedly disclosing an auger within an unloading conduit assembly. Pakosh does not remedy the deficiencies of Behnke. Thus, neither Behnke nor Pakosh, alone or in combination, describe or suggest a vertical conduit being mounted on the combine for sideways pivoting of at least a portion of the vertical conduit about a horizontal pivot axis to permit retracting said horizontal conduit into a storage position, wherein the horizontal pivot axis is parallel to the

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longitudinal axis of the combine. Accordingly, allowance of claim 10 is respectfully requested.

Conclusion

Applicants respectfully submit that claims 1-4, 7, 8 and 10-18 define patentable subject matter. A Notice of Allowance is therefore respectfully requested.

No fee is believed due with this communication. Nevertheless, should the Examiner consider any fees to be payable in conjunction with this or any future communication, authorization is given to direct payment of such fees, or credit any overpayment to Deposit Account No. 14-0780. The Examiner is invited to contact the undersigned by telephone if it would help expedite matters.

Respectfully submitted,



Michael G. Harms
Attorney for Applicant(s)
Reg. No. 51,780
Date: April 10, 2006

(717) 355-3969 Phone
(717) 355-3107 Fax